

U.S. DISTRICT COURT  
DISTRICT OF VERMONT  
FILED

2019 NOV 22 PM 12:54

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

PENNY WITHERBEE,  
Plaintiff,

CLERK  
BY LAW  
Civil Action No. 2:18-cv-00113-cr DEPUTY CLERK

TOWN OF BRATTLEBORO,  
BRATTLEBORO POLICE  
DEPARTMENT,  
PATRICK M. MORELAND,  
MARK E. CARIGNAN,  
MICHAEL R. FITZGERALD,  
and PETER ELWELL,  
Defendants.

**STIPULATED MOTION TO DISMISS  
AND TO AMEND CASE CAPTION**

NOW COME the Parties, Defendants Town of Brattleboro (the “Town”), Brattleboro Police Department, Peter Elwell, and Michael Fitzgerald, by and through their attorneys, Monaghan Safar Ducham PLLC; Defendant Mark E. Carignan, by and through his attorneys, Carroll, Boe & Pell; Defendant Patrick M. Moreland, by and through his attorneys, Cleary, Shahi & Aicher, P.C.; and Plaintiff Penny Witherbee, by and through her attorney, Susan Edwards, Esq., and hereby stipulate and move the Court as follows:

1. That all claims, including any claim for attorney’s fees pursuant to 42 U.S.C. § 1988 or otherwise, against the Defendants Brattleboro Police Department,<sup>1</sup> Peter Elwell, Michael Fitzgerald, Mark E. Carignan, and Patrick M. Moreland shall be dismissed *with prejudice* and that said dismissal shall be without monetary payment, admission, or other consideration on the

<sup>1</sup> Plaintiff previously withdrew her claims against the Brattleboro Police Department, and the Court dismissed those claims in the Opinion and Order Granting in Part and Denying in Part Defendants’ Motions to Dismiss the Amended Complaint. *See* Document 53, p. 2. To avoid any ambiguity, the Parties herein stipulate to the voluntary dismissal, with prejudice, of any such claims against the Brattleboro Police Department.

part of the Defendants Brattleboro Police Department, Peter Elwell, Michael Fitzgerald, Mark E. Carignan, and Patrick M. Moreland. This voluntary dismissal is made pursuant to F.R.C.P. 41(a). This Motion is not intended to, and does not, dismiss or affect in any way any of the claims against Defendant Town of Brattleboro.

2. That the caption be amended to delete all references to Brattleboro Police Department, Peter Elwell, Michael Fitzgerald, Mark E. Carignan, and Patrick M. Moreland. Thus, the case caption will read as follows:

**PENNY WITHERBEE,**  
**Plaintiff,**

**v.**

**TOWN OF BRATTLEBORO,**  
**Defendant.**

[Signatures on following page.]

DATED: November 20, 2019

Respectfully submitted,

TOWN OF BRATTLEBORO  
BRATTLEBORO POLICE  
DEPARTMENT  
MICHAEL R. FITZGERALD  
PETER ELWELL

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PENNY WITHERBEE

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**APPROVED and SO ORDERED:**

Date: 11/22/19

  
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Honorable Christina Reiss  
United States District Court Judge